

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF SUMPTER,

Plaintiff- Appellee,

v

SHELDON FUTERNICK, d/b/a, HOLIDAY WEST
MOBILE HOMES,

Defendant- Appellant,

and

MICHIGAN DEPARTMENT OF COMMERCE,

Defendant- Appellee.

TOWNSHIP OF SUMPTER,

Plaintiff- Appellant,

v

SHELDON FUTERNICK, d/b/a, HOLIDAY WEST
MOBILE HOMES, and MICHIGAN
DEPARTMENT OF COMMERCE,

Defendants- Appellees.

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

UNPUBLISHED

May 16, 1997

No. 189267

Wayne Circuit Court

LC No. 94-428718-CZ

No. 189444

Wayne Circuit Court

LC No. 94-428718-CZ

This dispute involves a mobile home park construction permit issued by defendant Michigan Department of Commerce (the Department) to defendant Futernick (defendant). In No. 189267, defendant appeals as of right from an order denying his motion for sanctions against plaintiff township. In No. 189444, the township appeals as of right from orders granting summary disposition in favor of defendant and the Department. We affirm in both cases.

We first address defendant's claim that the trial court clearly erred in denying his motion for sanctions. MCR 2.114 requires that every document in a legal action must be signed by a party or the party's attorney, and provides that the signature certifies that the signer believes the document is well grounded in fact. If a document is signed in violation of the rule, the court may impose "an appropriate sanction," including reasonable expenses incurred because of the filing of the document. MCR 2.114(E).

Defendant sought sanctions on the basis that plaintiff filed a frivolous pleading by alleging in Count VI of its First Amended Complaint that defendant presented false or altered receipts for additional units, even though plaintiff knew the receipts were authentic. In response to defendant's motion for sanctions, plaintiff submitted affidavits averring that portions of the questioned documents were altered and/or false. While ultimately a question of credibility, this evidence was sufficient to provide plaintiff a reasonable belief that the documents might have been altered. Because the allegations had an arguable basis in fact, the trial court did not clearly err in denying defendant's motion for sanctions. *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995).

In No. 189444, plaintiff first contends that the trial court improperly entered an order of summary disposition in favor of the Department, without notice and an opportunity for plaintiff to be heard. We do not agree. On January 20, 1995, the trial court entered an order entitled "Order Granting Defendant Sheldon Futernick's Amended Motion for Summary Disposition and Dismissing Plaintiff's Amended Complaint with Prejudice and without Costs." Both sides then appealed to this Court. We dismissed the appeals because the January 20 order was not a final order appealable by right. The trial court then entered its order of September 14, 1995, which provided that the trial court had intended to dismiss plaintiff's claims against both defendants and had intended on January 20 to grant summary disposition to the Department as well as to defendant.

Under MCR 2.612(A)(1), the trial court had the authority to correct errors arising from oversight or omission on its own initiative. That authority includes amending a judgment to more accurately reflect the actual decision of the court. *McDonald's Corp v Canton Twp*, 177 Mich App 153, 159; 441 NW2d 37 (1989). Thus, the trial court did not abuse its discretion in the present case.

Plaintiff next argues that the trial court erred in dismissing its complaint on the basis of the statute of limitations. We disagree. The Department's decision to issue defendant a construction permit application was not a "contested case" within the meaning of the Administrative Procedures Act, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, and MCR 7.105(A)(2) because no evidentiary hearing was

required. Because this was not a contested case, it is governed by MCL 600.631; MSA 27A.631, which in turn incorporates the applicable court rules. *Schommer v Director, Dep't of Natural Resources*, 162 Mich App 110, 121; 412 NW2d 663 (1987). Pursuant to the court rules, an appeal from an agency decision must be taken within twenty-one days from the date the agency's order was entered. *Id.* The appeal period is jurisdictional, and untimely appeals may be dismissed for lack of jurisdiction. *Id.* Since plaintiff failed to file its complaint within twenty-one days after the permit was issued, its complaint was barred by the statute of limitations, and the trial court properly dismissed it. Because we conclude that summary disposition was properly granted on the basis of the statute of limitations, we need not address the other issues which plaintiff raises.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Myron H. Wahls

/s/ Jane E. Markey